Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pressure Technology, Inc.

File: B-265793

Date: December 29, 1995

Michael H. Higgins for the protester.
Robert S. Chichester, Esq., Environmental Protection Agency, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducted meaningful discussions by apprising the protester of the significant evaluated weaknesses in its technically acceptable proposal; agency is not obligated to discuss every aspect of a technically acceptable proposal that receives less than the maximum score.

2. Protest that agency improperly applied unstated evaluation criterion by considering offerors' availability of key personnel is denied where proposal was not downgraded in this regard.

3. Agency reasonably concluded that award should be made to the technically superior offeror in a best value procurement, notwithstanding the cost premium involved, where the solicitation stated that technical considerations were more important than cost and awardee's proposal was considered technically superior to a less costly proposal.

DECISION

Pressure Technology, Inc. (PTI) protests the award of a contract to EDO Corporation under request for proposals (RFP) No. C500071T1, issued by the Environmental Protection Agency (EPA), for improved specific energy pressure vessels for hybrid vehicle applications. PTI contends that the EPA conducted inadequate discussions and misevaluated PTI's proposal.

We deny the protest.

The RFP, issued on December 9, 1994, contemplated the award of a cost-plus-fixed-fee contract for a base year, with a 1-year option. Offerors were instructed to submit separate technical and cost proposals. The RFP stated that award would be made to the responsible offeror whose offer conforming to the RFP would be the most advantageous to the government, cost and other factors considered. Cost was

of lesser importance than technical, but the RFP stated that "[a]s proposals become more equal in their technical merit, the evaluated cost or price becomes more important." The second most important technical factor was "corporate capability," which included key personnel experience as one of its subfactors.

Four offerors submitted initial proposals. After evaluation, three of the four proposals were included in the competitive range. EDO's technical proposal was ranked first with an overall excellent rating and PTI's was ranked second with an acceptable rating. On April 5, the EPA conducted discussions with each offeror, posing written questions concerning the weaknesses in each offeror's proposal. The EPA received revised proposals on April 18. The agency then conducted a detailed evaluation of cost proposals and held oral discussions on cost issues.

The EPA received best and final offers (BAFO) on June 9. PTI's BAFO received 73 points out of a possible total of 100 points, and its total cost (with options) was $158,166. EDO's BAFO received a technical score of 94 points and its total cost was $287,677. The agency determined that EDO's proposal offered the best value to the government and made award to that company on August 7.

The protester first argues that the agency failed to conduct meaningful discussions. PTI argues that the EPA downgraded its BAFO based on weaknesses which should have been apparent in its initial proposal, but which were not pointed out to PTI during discussions. As a result, PTI argues, it was improperly denied the opportunity to cure these weaknesses.

Contracting officers must balance a number of competing interests in selecting matters for discussion based on the facts of each acquisition. Federal Acquisition Regulation (FAR) § 15.610; Matrix Int'l Logistics, Inc., B-249285.2, Dec. 30, 1992, 92-2 CPD ¶ 452. They must point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Department of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422. On the other hand, agencies are admonished by the FAR to protect the integrity of the procurement process by balancing the need for meaningful discussions against actions that result in technical leveling (FAR § 15.610(d)), technical transfusion (FAR § 15.610(e)(1)), or auction (FAR § 15.610(e)(2)). Thus, agencies are not required to afford offerors all-encompassing discussions. They need only lead offerors generally into the areas of their proposals that require amplification. TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal that receives less than the maximum score. Caldwell Consulting Assocs., B-242767, B-242767.2, June 5, 1991, 91-1 CPD ¶ 530.

PTI principally objects to the discussions because at the debriefing, the EPA identified several alleged weaknesses in its proposal that were not the subject of

discussions, which PTI argues deprived it of the opportunity to submit a revised proposal that could have been technically superior to EDO's.

The technical evaluation panel (TEP) concluded, after an initial review of PTI's proposal, that it met or exceeded all but one of the minimum requirements. Therefore, while it conducted discussions with PTI, the TEP did not discuss every item that was not flawlessly addressed in PTI's proposal. For example, while the TEP noted that PTI's proposal offered an adequate tracking system for monitoring technical progress and expenditures but only briefly discussed reporting requirements and failed to provide details as to the contents of these reports, the TEP asked PTI to demonstrate its ability to comply with the RFP's reporting requirements during discussions, but did not ask for details on the contents of the reports. Since the record indicates that neither this lack of detail or any of the other weaknesses were viewed as significant by the TEP and had a minimal impact on the proposal's technical rating, we do not believe that the agency was required to raise these matters in discussions. See Booz, Allen, & Hamilton, Inc., B-249236.4; B-249236.5, Mar. 5, 1993, 93-1 CPD ¶ 209. Discussions are not required to ensure ultimate award by identifying every single weakness in a technically acceptable proposal, see DynCorp et al., B-257037.2 et al., Dec. 15, 1994, 95-1 CPD ¶ 34, and the record provides no basis to conclude that the discussions conducted with PTI were in any way inadequate.

Next, PTI contends that the agency improperly considered the availability of key personnel. PTI argues that this represents use of an undisclosed evaluation criterion.

The solicitation did not explicitly provide that the proposals would be reviewed for availability of key personnel, but did provide that proposals would be reviewed for the experience of proposed key personnel. During discussions PTI was asked to identify the experience and availability of all key personnel that would be assigned to the project. In response, PTI provided three additional resumes of key personnel that it proposed to be assigned to the project, but failed to specifically address availability. The TEP increased PTI's score for this criterion as a result of the information included in the revised proposal. The TEP specifically noted that "PTI did not specifically address availability, but does not indicate any restriction on availability." Thus, in fact PTI's proposal was not downgraded regarding availability of proposed key personnel.

Finally, the protester challenges the agency's cost/technical tradeoff, asserting that insufficient weight was given to its significantly lower cost. In addition, PTI protests the selection of EDO's much higher cost proposal for award, asserting that the agency did not specifically determine that the cost premium associated with EDO's proposal was justified.

In a negotiated procurement, the government is not required to make award to the lowest-cost, technically acceptable offeror unless the RFP specified that cost will be the determinative factor. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Source selection officials have broad discretion to determine the manner and extent to which they will make use of the technical and cost evaluation results in negotiated procurements. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Cost/technical tradeoffs may be made in selecting an awardee, subject only to the test of rationality and consistency with the established evaluation factors. Varian Assocs., Inc., B-238452.4, Dec. 11, 1990, 90-2 CPD ¶ 478. FAR §15.612(d)(2) requires that documentation supporting the selection decision show the relative differences among proposals; their strengths, weaknesses and risks; and the basis and reasons for the decision. Even where a selection official does not specifically discuss the cost/technical tradeoff in the selection decision document, we will not object to the tradeoff if it is clearly supported by the record. Maytag Aircraft Corp., B-237068, Apr. 26, 1990, 90-1 CPD ¶ 430.

The record in this case clearly supports the propriety and reasonableness of the agency's cost/technical tradeoff. As indicated above, under the RFP, technical merit was more important than cost. The protester increased its technical score, after discussions, to an overall good rating. The agency determined that PTI's proposal was fairly innovative and that its proposed key personnel had adequate experience. However, EDO's technical proposal received a superior rating under most of the evaluation factors and received a significantly higher overall technical score. In particular, the agency determined that EDO's BAFO was superior under "innovation of design," the subfactor with which the agency was most concerned--as reflected by its being the most heavily weighted--and found that its proposed key personnel were highly qualified in terms of engineering and management experience. The agency viewed these aspects of EDO's proposal as presenting clear advantages over PTI's proposal. Although the SSO's written determination did not refer to a cost/technical tradeoff per se, it is implicit in this determination that the SSO considered the awardee's technical superiority worth the associated cost premium. The source selection statement specifically notes that technical and cost factors were considered, that cost was of lesser importance, that EDO submitted the technically superior proposal, and that EDO was therefore the best qualified firm to perform the contract. See Avanco Int'l, Inc., B-241007.2, Mar. 13, 1991, 91-1 CPD ¶ 276.

Given this record, and the fact that technical merit was identified as being of greater importance than cost, we have no basis for concluding that the agency did not give cost its appropriate weight or otherwise did not perform a reasonable cost/technical tradeoff. Picker Int'l, Inc., B-249699.3, Mar. 30, 1993, 93-1 CPD ¶ 275.[1]

The protest is denied.

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[1]PTI also protests that its status as a small business was not considered by the agency, as provided in the RFP. The solicitation provided that as technical merit and the evaluated cost became essentially equal, other factors, such as small business status, would become more important. We find that the agency properly made its award decision based on technical and cost considerations due to the significant disparity between EDO's technical score and cost, and that of PTI's. The agency did not properly consider the protester's small business status because EDO's technical score and cost were not "essentially equal" with that of PTI.